93

A. M. Sup. Ct. U. S.

SUPREME COURT OF THE UNITED STATES.

No. ~~395~~. 204. 12.

THE UNITED STATES, APP'TS,

vs.

SAMUEL J. HENSLEY.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

G. S. Gideon, Printer, 511 Ninth street, Washington, D. C.

Rec'd & Remanded

Dec. 9. 1861.

53

SUPREME COURT OF THE UNITED STATES.

No. 305.

THE UNITED STATES, APP'TS,

vs.

SAMUEL J. HENSLEY.

APPEAL FROM THE DISTRICT COURT OF THE U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Petition	4	2
Deposition of P. R. Reading	5	3
Deposition of J. A. Sutter	6	4
Agreement	9	5
Document "J. W. No. 2."	10	6
Exhibit "A," Espediente	14	8
Map	14	9
Exhibit "B."	17	10
Document "J. W. No. 1."	20	12
Exhibit "C,"—Translation	21	12
Opinion	22	13
Decree	27	16
Secretary's certificate	29	17
Notice of appeal	30	18
Order permitting further evidence to be taken	30	18
Petition	31	18
Answer	32	19
Opinion by his Honor, Judge M. H. McAllister	33	19
Decree	40	24
Order granting appeal, &c	41	24
Order to file mandate U. S. Supreme Court	42	25
Mandate	43	25
Order granting appeal	45	26
Citation	46	27
Clerk's certificate	47	27

GIBSON, Print.

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle Private Land Claims in the State of Cal'a.

Be it remembered, that on this twenty-seventh day of April, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Samuel J. Hensley, for the place named "Aguas Nieves," was presented, and ordered to be filed and docketed with No. 201, and is as follows, to wit:

(Vide page 5 of this Transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *May* 13*th*, 1852.

In case No. 201, Samuel J. Hensley, the deposition of John A. Sutter, a witness on behalf of the claimant, taken before Commissioner James Wilson, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this Transcript 7, 8, and 9.)

SAN FRANCISCO, *August* 14*th*, 1852.

In case No. 201, Samuel J. Hensley, for the place called "Aguas Nieves," the parties litigant filed an agreement relative to placing this case on the trial docket, which is as follows, to wit:

(Vide page of this Transcript 9.)

SAN FRANCISCO, *August* 14*th*, 1852.

The following case was ordered to be placed on the trial docket, subject to the stipulation filed this day by the parties litigant, to wit:

(Vide pages 9 and 10.)

No. 201; Samuel J. Hensley; "Aguas Nieves."

SAN FRANCISCO, *January* 27*th*, 1853.

In case No. 201, Samuel J. Hensley, for the place named "Aguas Nieves," the counsel for the claimant filed the original documents marked J. W., Nos. 1 and 2, annexed to the deposition of John A. Sutter, a witness on behalf of the claimant, taken before Com-

missioner James Wilson, on the 13th May, 1852, and are in the words and figures as follows, to wit:

(Vide pages of this Transcript.)

SAN FRANCISCO, *January 28th*, 1853.

Case No. 201, Samuel J. Hensley, for the place named "Aguas Nieves," called; the counsel for the claimant, represented by Mr. Robert Rose, read the papers in evidence, and his brief; answered by the United States associate law agent; case submitted, and taken under advisement by the board.

In the same case, the counsel for the claimant filed the following agreement, to wit:

(Vide pages of this Transcript.)

SAN FRANCISCO, *February 14th*, 1853.

In case No. 201, Samuel J. Hensley, for the place named "Aguas Nieves," Commissioner Harry J. Thornton delivered the opinion and decree of final confirmation of this board; ordered that the opinion and the decree of final confirmation of this board, delivered this day in this case, be recorded on the journal; which opinion and decree are in the words and figures as follows, to wit:

(Vide pages of this Transcript.)

SAN FRANCISCO, *May 5th*, 1852.

In case 201, Samuel J. Hensley, the deposition of Pearson B. Reading, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this Transcript.)

Petition.

To the Honorable the Board of U. S. Land Commissioners to settle private land claims in California:

The petition of Samuel J. Hensley respectfully showeth: That he is the original and present claimant of a tract of land in Butte county, known by the name of Aguas Nieves, and containing six square leagues; that the same was granted to him by the decree of Governor Micheltorena in December, 1844, who acted under the authority of the laws of the Spanish and Mexican governments relating to the granting of lands, and the letter of commission issued to said Governor Micheltorena from the Mexican government; that there is no conflicting claim to said grant known to your petitioner, and he relies upon the documentary evidence hereto annexed, marked Exhibits A, B, and C, and the testimony of witnesses to be produced and examined before your honorable board.

All of which is respectfully submitted for such action as the justice and nature of the case may require.

San Francisco, April 27th, 1852.

CROSBY & BELKNAP,
Counsel for Petitioner.

Filed in office April 27th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of P. R. Reading.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS, *San Francisco, May 5th,* 1852.

On this day, before Mr. Hiland Hall, one of the commissioners for ascertaining and settling private land claims in the State of California, came Pearson B. Reading, a witness produced in behalf of the claimant, Samuel J. Hensley, whose petition is number 201 on the docket of the board, and was duly sworn.

The law agent was notified, and attended.

In answer to questions propounded by the counsel for the claimant, the witness testified as follows:

My name is Pearson B. Reading; my age is thirty-six; and my residence is in Shasta county, in this State; I have resided in California ever since the fall of 1843; I am acquainted with Samuel J. Hensley, and have been for the last ten years. He received a grant from Governor Micheltorena of six leagues of land, situated in Sacramento valley, bounded on the east by the foot of hills of Sierra Nevada and Butte creek, on the south by vacant lands, since granted to Osio, on the west by a rancho called Llano Seco and rancho de Farwell, and on the north by Little creek. I have seen the grant, and had it in my possession for some time for safe keeping; I think it was made in 1844, but am not certain about the time. I think it was in September, 1845, that he entered upon the land and commenced building a house, and put stock on the place, both horses and cattle; I do not know the number first put on, but there was afterwards several hundred head on the place, and land was also ditched and cultivated. The house was inhabited immediately on its being built in the month of October, 1845, as I think. Some fifteen or twenty acres of the land was cultivated in 1847. Captain Sutter espoused the cause of Micheltorena, and some three hundred men were raised at the time of the revolt in 1844, and Hensley served as commissary of subsistence during the whole war until April, 1845, when Micheltorena having been defeated, left the country. I think Hensley's services commenced in December, 1844.

A paper being shown me, purporting to be an original expediente. I believe the signature of Micheltorena, which appears upon said paper, to be his genuine signature. I have seen him write

and am acquainted with his signature. I have compared the first page, the third page, and the map in Exhibit "A," in this case, with said original paper, and find said pages and map are correctly copied from the same.

P. B. READING.

Sworn and subscribed before me.

HILAND HALL,
Commissioner.

Filed in office May 5th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. A. Sutter.

Case No. 201 upon the Docket.—For confirmation of the Grant of Rancho "Aguas Nieves."

BOARD OF COMMISSIONERS
To ascertain and settle Private Land Claims in California.

On this 13th day of May, A. D. 1852, came before me, James Wilson, one of said commissioners, Captain John A. Sutter, a witness offered by Samuel J. Hensley, petitioner, and being duly sworn, gave the following testimony.

Geo. W. Cooley, law agent of the United States, was notified, and did attend to the taking of the testimony of said witness.

In answer to interrogatories propounded by petitioner's counsel, the deponent answers as follows:

I am acquainted with the handwriting of Governor Manuel Micheltorena, and have seen him write very often. The paper now shown to me as an original paper, and purporting to be the certificate of the governor of naturalization of Samuel J. Hensley, as a citizen of Mexico, is a genuine paper, and the signature of Manuel Micheltorena to said paper is his true signature. The commissioner has affixed his initials to said paper, and marked it as follows: J. W. No. 1. I have also compared said paper with document marked Exhibit C, on the files in this cause, and I find the said Exhibit C to be a true copy in the Spanish language, and the translation of the same into English, to be substantially correct.

I further state, that an original paper purporting to be the original of paper marked Exhibit "A," in said cause, which is now shown me, is a genuine paper, and the signatures of Governor Manuel Micheltorena, Secretary Manuel Jimeno, the signature of Samuel J. Hensley, and my own signature, where they occur on said paper, are all genuine signatures of those several persons.

The last paper attached to said Exhibit A, marked by the commissioners as follows, J. W., I have carefully examined, and I state, that I gave a copy of the original paper which I had received

from Governor Micheltorena to Sam'l J. Hensley as security for the land he claims, until such times as he could perfect his title to the same according to the forms required; I gave that copy to Samuel J. Hensley about the 20th of April, A. D. 1845.

The map which is attached to the original paper marked J. W. No. 2 is an original, of which a copy is attached to Exhibit "A," in this case.

I was military commander of the northern frontier, and exercised civil jurisdiction in all the northeastern portion of the territory of Upper California in the years 1844 and 1845. I know the rancho "Aguas Nieves," claimed by Sam'l J. Hensley, and the same was within my jurisdiction. It is on Butte creek, in the Sacramento valley, about one hundred miles north of Sutter fort. Mr. Hensley applied to me in the spring of 1845 to be put in juridical possession of the rancho Aguas Nieves. I did not give him juridical possession of the same as he requested, for the reasons that I was engaged in a military campaign with Governor Micheltorena from January, 1845, to the 1st of April, 1845. Immediately on my return from the said campaign, I had to go out again on an Indian campaign. Soon after my return from the said Indian campaign Col. Fremont came with his party into that section of the Territory, and a general revolution followed throughout California. I soon ceased to exercise either military command or civil jurisdiction. For these reasons I could not comply with his request.

Upon examination of the witnesses by G. W. Cooley, esq., law agent of the United States, the witness says that his civil jurisdiction extended from the San Joaquin northward over the whole Sacramento valley.

J. A. SUTTER.

The law agent, G. W. Cooley, esq., objects generally to the foregoing deposition as incompetent, reserving generally all legal objections.

May 13th, 1852.

Subscribed and sworn to before me.

JAMES WILSON,
Commissioner.

Filed in office May 15th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Agreement.

SAMUEL J. HENSLEY
vs. } No. 201.
THE UNITED STATES.

It is agreed by the counsel of the claimant in the above case,

that a certified copy of the general title from Governor Micheltorena to Captain John A. Sutter be used as evidence in this case.

E. O. CROSBY, *For Claimant.*

R. GREENHOW,
Ass't Law Agent.

Filed in office January 28th, 1853.

Agreement.

Before the Board of U. S. Land Commissioners to settle Private Land Claims in the State of California.

In the matter of the claim of Samuel J. Hensley, No. 201 on the docket of said commission.

It is hereby stipulated, that this cause be opened by the law agent of the U. S., in the event he may desire to take further testimony prior to its final argument, and submission to said board for final decision.

E. O. CROSBY,
Att'y for Claimant.

D 20

GEO. W. COOLEY,
U. S. Law Agent.

Filed in office August 14th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Document T. W. No. 2.

Sello Cuarto—Dos Reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA,
Por aus'a del Administrad'r, Guillermo Edouardo Hartnell.

MICHELTORENA.

Ex'mo Señor Gobernador:

Samuel J. Hensley, nativo de los E. U. ante V. E. con el mas profundo respeto se presenta y espone. Que siendo naturalizado Mejicano y deseando dedicarse a la agricultura a V. E. humildemente suplica tenga la bondad de concederle el terreno conocido con el nombre de Aguas Nieves consta de seis sitios de ganado mayor, y son sus linderos, al N. arroyo Chico, al E. las faldas de la Sierra Nevada al S. tierra Valdia y al pon'te el Rancho del Llano Seco, y el de Farwell, como manifiesta el diseño que debidamente acompaña.

P. T.

A. V. S. ruego se digne aceder a esta mi peticion en lo que recibire merced y gracia.

Monterey, a 25 de Julio, de 1844.

SAML. J. HENSLEY.

MONTEREY, *Julio* 25, *de* 1844.

Inf'e el Sr. s'rio del despacho tomando los que crea necesitar.

MICHELTORENA.

Como dispone el ex'mo Sr. gobernador, pace este espediente al Sr. Sutter para que sirva informar sobre su contenido.

Monterey, Julio 26, de 1844.

MANUEL JIMENO.

El terreno que solicita en este pedimento el cuid'o Samuel Hensley y q'e es representado en el adjunto diseño, esta desocupado y doy esta certificacion p'a los fines que convengan.

Jurisdicion del rio Sacramento, Nueva Helvetia, Setiembre 2, de 1844.

J. A. SUTTER.

Ex'mo Sr. Gobernador:

Para que V. S. pueda continuar con mas acierto la colonizacion de los terrenos que estan por el rio del Sacramento, seria conbeniente suspender su solicitud de igual naturaleza como la precedente, hasta q'e V. E. pueda hacer la visita por el dicho rumbo, pero V. E. dispondra lo que tubiese por conbeniente.

Monterey, N'bre 10, de 1844.

MAN'L JIMENO.

F'ha id. Con el informe.

MICHELTORENA.

Filed in office Jan'y 27, 1853.

GEO. FISHER, *Sec'y*.

Original exhibited by Capt. Sutter, and proved before me, J. W., May 13, 1852.

Manuel Micheltorena, G'ral de Brigada del Ejercito Mejicano, Ayudante G'ral de la Plana Mayor del mismo, Gobernador, Comand'te G'ral y Inspector del Departam'to de Californias.

No pudiendo ahora por estar sumamente occupado este gobierno supremo departamental, estander uno por uno los titulos respectivos a todos los ciudadanos que han solicitado terrenos con informes a su favor del S'or Don Augusto Sutter, capitan y juez encargado de la jurisdicion de Nueva Elvecia y Sacramento, a nombre de la nacion Mejicana les confiero por estas letras la propiedad pa. ellos y sus familias, de los respectivos terrenos marcados en sus instancias y diseño a todos y a cada uno de los q'e hallan solicitado y obtenido informe favorable del espresado S'or Sutter h'ta hoy dia de la f'ha sin que nadie pueda disputarles en propiedad sirviendoles una copia de este que les dara mas adelante el S. Sutter de titulo formal con el qe. presentaran a este gobierno pa. estenderles el mismo titulo en la debida

[SEAL.]

[SEAL.]

forma y papel sellado correspondiente, y para la debida constancia en todos tiempos doy este documento que sera reconocido y acatado por todos las autoridades civiles y militares de la nacion Mexicana en este y en los demas departamentos, autorizado debidamente con los sellos militar y de gobierno en Monterey a veinte y dos de Diciembre de mil ochocientos cuarenta y cuatro.

MAN'L MICHELTORENA.

STATE OF CALIFORNIA,
Sacramento County.

On this 28th of June, A. D. 1850, I, Lewis A. Birdsall, hereby certify that John Bidwell, Samuel J. Hensley, George McKinstry, and Isaac J. Mott, severally came before me, and being duly sworn by me, and being all credible witnesses, *dis*pose and say on oath that they know Michelt'a, the above named grantor, and are well acquainted with his written signature, having seen him write, and that they verily believe that he signed the above with his own hand.

In witness whereof, I, Lewis A. Birdsall, recorder in and for the county of Sacramento and State of California aforesaid, have set my hand and seal the day and year above written.

L. A. BIRDSALL,
Recorder Sac. County, California.

This paper proved by the testimony of John Bidwell, before me, April 16, 1852.

H. HALL, *Com'r.*

Filed for record June 28th, 1850, at 10 o'clock, and duly recorded in book D of deeds, page 140.

LEWIS A. BIRDSALL.
By J. A., *Dep'y.*

Filed in office Jan'y 28, 1853.

GEO. FISHER *Sec'y.*

Exhibit A—Espediente.

Sello Cuarto—Dos Reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA,
Por aus'a del Administ'r Guill'o Ed'o Hartnell.

MICHELTORENA.

{ Ad'a Maritima de Monterey. (Eagle.) }

Exmo. S'or Gobernador:

Samuel J. Hensley, nativo de los E. U. ante V. E. con el mas profundo respecto se presenta y espone.

Que siendo naturalizado a la agricultura a V. E. humildemente suplica tenga la bondad de concederle el terreno conocido con el nombre de Aguas Nieves, consta de seis sitios de ganado mayor, y son sus linderos, al n. Arroyo Chico, al E. las faldas de la Sierra Nevada al S. tierra baldia y al Poniente el rancho del *Dano* Seco y el de Farwell como manifiesta el diseño que debidamente acompaña.

P. T. A. V. E. ruega se digne acceder a esta su peticion en lo que recibire merced y gracia.

Quedo de V. E. el mas atento Serv'r,

SAM'L J. HENSLEY.

Monterey, a 25 de Julio de 1844.

MONTEREY, *Julio* 25 *de* 1844.

Inf'e el S. s'rio del despacho tomando los q'e crea necesario.

MICHELTORENA.

Dispone el Exmo. S'or gobernador, pase este espediente al S'or Sutter para que sirva, informar sobre su contenido.

[*Here follows map—see original, page* 14.]

Monterey, Julio 26 de 1844.

MAN'L JIMENO.

El terreno que solicita en este pedimento el C'o Samuel Hensley, y que es representado en el adjunto diseño esta desocupado y doy esta certificacion p'a los fines q'e convengan.

Jurisdicion del rio Sacramento, Nueva Helvecia, Setiembre 2 de 1844.

J. A. SUTTER.

Para que V. E. pueda continuar con mas acierto colonizacion de los terrenos que estan por el rio del Sacramento, seria combeniente suspender las solicitudes de igual naturaleza como la precedente hacer la visita por el dicho rumbo para V. E. dispondra lo que tubiese por combeniente.

Monterey, No'bre 10 del 1844.

MAN'L JIMENO.

F'ha id.

Con el informe. MICHELT'A.

Manuel Micheltorena, G'ral de Brigada del Ejercito Mexicano, Ayudante G'ral de la Plana Mayor del mismo, Gobernador, Comand'te G'ral y Inspector del Departamento de las Californias.

Gobierno del California Departamento.

No pudiendo ahora por estar sumamente ocupado este gobierno supremo departamental estender uno por uno los titulos respectivos, a todos los ciudadanos que han solicitado terrenos con informe a su

favor del S'r Don Augusto Sutter, capitan y juez encargado de la jurisdicion de Nueva Elvetia y Sacramento a nombre de la nacion Mejicana les confiero por estas letras de la propiedad por ellos y sus familias, de los respectivos terrenos marcados en sus instancias y diseños a todos y a cada uno de los q'e hallan solicitado y obtenido informe favorable del espresado D. A. Sutter h'ta hoy la f'ha sin que nadie pueda disputarlos en propiedad, sirviendoles una copia de este que les dara mas adelante el S'or Sutter, de titulo formal con el q'e se presentaran a este gobierno p'a estenderles el mismo titulo en la debida forma y papel sellado correspondiente y p'a la debida constancia en todos tiempos doy este documento q'e sera reconocido y acatado por todas las autoridades civiles y militares de la nacion Mexicana en este y en los demas departamentos autorizado debidamente con los sellos militar y de gobierno en Monterey a veinte y dos de Diciembre de mil ochocientos cuarentay cuatro.

MANUEL MICHELT'A.

Es copia Nueva Helvetia 184.

J. A. SUTTER.

Filed in office April 27, 1852.

GEO. FISHER, *Sec'y*.

Exhibit "B."

Translation of Espediente of Samuel Hensley of Rancho de "Aguas Nieves."

Most Excellent Señor Governor:

Samuel J. Hensley, native of the United States, presents himself before you, with the most profound respect, and says: That being a naturalized Mexican, and desiring to devote himself to agriculture, he humbly begs you will have the goodness to grant him the land known by the name of the Aguas Nieves, consisting of six leagues of ganado mayor; and its boundaries are, viz: On the north the Arroyo Chico, on the east the foot of Sierras Nevadas, on the south vacant land, and on the west the rancho of Llano Seco and of Farwell, as shown on the map which respectively accompanies this.

Wherefore I beg your excellency will think worthy to grant this my petition, whereby I shall receive favor and grace.

I remain your most ob't serv't,

SAMUEL J. HENSLEY.

Monterey, July 25th, 1844.

(Marginal decree.)

MONTEREY, *July 25th*, 1844.

Let the secretary of despatch give information, taking those steps he may deem necessary.

MICHELTORENA.

The most excellent Señor Governor orders this espediente to pass to Señor Sutter to inform him as to the matters it refers to.

Monterey, July 26th, 1844.

MANUEL JIMENO.

The land prayed for in this petition by citizen Samuel J. Hensley, and which is represented on the accompanying map, is unoccupied, and I give this certificate for the purposes which it may serve.

J. A. SUTTER.

Jurisdiction of the river Sacramento to New Helvetia, Sept. 2, 1844.

Most Excellent S'or Governor:

That you may continue with the more prudence the colonization of lands on the Sacramento river, it would be well to suspend all petitions of a kind similar to the foregoing until you can make a visit to the said point, and you will dispose whatever is right.

Monterey, Nov. 11, 1844.

MAN'L JIMENO.

Let the same be done according to the information.

MICHELTORENA.

Manuel Micheltorena, Gen. of Brigade of the Mexican Army, Adjutant General of the Staff, Governor Commandant General of the Staff, Gov. Commandant General and Inspector of the Department of the Californias.

Not being able now, on account of being closely occupied this supreme departmental government, to extend one by one the respective titles to all the citizens who have petitioned for lands with a favorable information from Señor Dn. Augustus Sutter, captain and judge in charge of the jurisdiction of New Helvetia and Sacramento, I, in the name of the Mexican nation, by these letters, confer upon them and their families the lands described in their applications and maps, to all and each one of them who has solicited and obtained favorable information from said Señor Sutter up to the day of this date, so that no one can dispute their title. Señor Sutter will give them a copy of this in furtherance of a formal title, with which they will present themselves to the government to extend the same title in the proper form and upon corresponding sealed paper. And for the establishment of which fact, for all time, I give this document, which will be known and acknowledge by all the civil and military authorities of the Mexican nation in this and the other departments.

Duly authenticated with the seal of the government and the military seal, in Monterey, the 22d of December, 1844.

(Signed) MAN'L MICHELTORENA.

I certify the above is a true copy.
New Helvetia, 184 .

J. A. SUTTER.

Filed in office April 27th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Document T. W. No. 1.

El ciudadano Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante General de la Plana Mayor del mismo, Gobernador, Comandante General e Inspector del Departamentos de Californias.

Habiendo Samuel J. Hensley, natural de los Estados Unidos del norte, cumplido con las condiciones y requisitos que previene la ley para conceder cartas de naturalezar á los estranjeros acompañando los documentos necesarios, he venido por el presente al espresado Dn. Samuel Hensley, en la Republica Mejicana, en virtud de la facultad que por aquella ley se me confiere.

Monterey, á 25 de Julio, de 1844.

MAN'L MICHELTORENA.

T. W. No. 1.
MANUEL JIMENO, *S'rio.*
Filed in office Jan'y 27, de 1853.

GEO. FISHER,
Secretary.

Exhibit C.—Translation.

Translation of the foregoing.

The citizen Manuel Micheltorena, General of Brigade of the Mexican Army, Adjutant General of the Staff, Governor, Commandant General and Inspector of the Department of the Californias.

Samuel J. Hensley, native of the United States of the north, having fulfilled the conditions and requisites which the law of granting letters of naturalization prescribes, the necessary documents accompanying, I, by these letters, have naturalized the said Samuel J. Hensley in the Mexican Republic, in virtue of the power conferred upon me by the said law.

Monterey, July 25, 1844.

MAN'L MICHELTORENA.

MANUEL JIMENO, *Sec'y.*

OEFICE OF THE BOARD OF COMMISSIONERS OF
CALIFORNIA LAND CLAIMS.

I certify the foregoing to be a true and correct translation of the original on file in this office in case No. 201 on the docket of the board.

GEO. FISHER, *Sec'y.*

Filed in office April 27th, 1852.
(Signed) GEO. FISHER, *Sec'y*.

Opinion.

U. S. Land Commission for California.

SAMUEL J. HENSLEY, Claimant,
vs.
THE UNITED STATES. } No. 201.—"Aguas Nieves."

Opinion by H. J. Thornton.

The claim presented in this case is founded upon an espediente, consisting of a petition accompanied with a map or diseño of the land asked for, addressed by the claimant to Micheltorena, governor of California, dated on the 25th of July, 1844; a decree entered thereon of the same date, directing the secretary of despatch, Manuel Jimeno, to take the necessary steps for information; an order of the next day by the said secretary addressed to Señor Augustin Sutter for such information; the report of that officer on the 29th of September, 1844, that the land sought was vacant; an entry by the said secretary of the 11th of November, 1844, suggesting to the governor to suspend all petitions of a similar kind until he should visit that section of country, concluding with the words, "But your excellency will do in the premises whatever to you may seem best;" an order, without date, in the following words: "Let the same be done according to the information. (Signed) Micheltorena;" and finally a copy of a document which was executed by Micheltorena on the 22d of December, 1844. The land claimed, although, for the reasons assigned by the officer applied to for that purpose, it was not measured nor delivered judicially to the claimant, was occupied, built upon and cultivated by him in the year 1845, and afterwards more largely stocked, ditched and cultivated. All the documents composing this expediente are fully proved to be genuine, and the original document called the title, signed by Micheltorena on the 22d of December, 1844, was also proved by the testimony of Capt. Sutter, to whom it was delivered, who also proved that the copy attached to the espediente was delivered to the claimant about the 20th of April, 1845. The important question for our decision in this case is, what the force and effect of that document above referred to, concluding the espediente towards the investiture of the claimant with any right or title to the land claimed, which, according to the principles prescribed for our government, can be recognised and confirmed. That document commences with a recital by the governor: "That, not being able, in consequence of his close occupation with the affairs of the government, to extend one by one the respective titles to all the citizens who have petitioned for lands with a favorable information from Señor Don Augustus Sutter, captain and judge in charge of the jurisdiction of New Helvetia and

Sacramento, I, in the name of the Mexican nation, by these letters confer upon them and their families the land described in their applications and maps to all and each of them who has solicited and obtained favorable information from said Señor Sutter up to this day, so that no one can dispute their titles. Señor Sutter will give them a copy of this in furtherance of a formal title, with which they will present themselves to this government to extend the same title in the proper form, and upon corresponding sealed paper. And for the establishment of which fact for all time, I give this document, which will be known and acknowledged by all the civil and military authorities of the Mexican nation in this and the other departments, duly authenticated with the seal of the government, and the military seal in Monterey, this 22d of December, 1844. (Signed) Manuel Micheltorena." I entertain no doubt that this document, which was signed by Micheltorena, and delivered to Captain Sutter, has the same validity and effect as if delivered to each individual whom it was extended to benefit and embrace; in other words, that it is of the same force and effect as if, instead of being merely descriptive of the grantees, it had been made to each and every one of them nominative.

The object of all rules of interpretation is to discover the intensons meant and to distinguish them from all others, operate as a good tion of the party, and any words that are sufficient to denote the perdescription. Greenleaf's Evidence, 364, paragraph 287. Greenleaf's Cruse on Real Property, 206, title 38; Devise, ch. 10, sect. 26 and 27. Nor is there any difference, in this particular, between public and prive grants. The doctrine is that even in grants by the sovereign in which nothing passes by implication, a grant in general terms referring to a certainty, is the same as if the certainty had been expressed in the grant itself, though such certainty be not of record, but lie in averment by matter in pais or in fact. 2d Greenleaf's Cruse, title 24; King's Grants, sect. 15 and 18. In this document executed by Micheltorena, he states that owing to the pressure of his official duties, he cannot execute a title in form, one by one, to all those who have petitioned for land and have a favorable information; but that there may be no failure of colonization, which was the cherished policy of the nation, nor any injustice to the citizen, he executes a solemn deed, containing the strongest words of grant or concession, describing the thing granted with sufficient certainty by express to the petition, and map or diseño, in which in this instance at least its quantity and boundaries are given, describing the grantees, as those petitioners who have obtained favorable reports from Señor Sutter, a high functionary of the government in the district where the land was situated, in response to his own order for information, addressed to that officer. The considerations upon which Micheltorena executed and delivered this document are precisely those which are prescribed by the

Mexican decree of the 18th of August, 1824; and by the ordinance of the 24th of November, 1828, according to the scheme or plan established by that decree, and ordinance for the disposition, settlement and colonization of the public domain upon the application in writing by any one to the political chief of the territory, it became his duty to obtain the necessary information, both as regarded the land and the applicant, and when the requirements of the law were met, to sign a document in accordance with the 4th and 8th articles of the said ordinance, which was to serve as a title. There was no particular form prescribed in which that document should be framed, which the governor is thus required to sign, and in virtue of which the party may proceed to the possession. The object and effect of the document issued in this instance were not merely a manifestation on the part of the governor, that he was satisfied that the persons therein described were entitled to grants, but to transfer them a right and title to the land. That intention is clearly conveyed by this language used in the document. In the name of the Mexican nation, I confer by these letters the land, &c., so that no one can dispute their title. And at the same time, that for the reasons alleged a more formal instrument is not executed in extent to each person thus acknowledged to be entitled to the land described in the petition and map. Yet a most solemn assurance is given, that such formal title will be extended at any future time upon the application of the party. Nor was there any time limited within which this more formal title was to be applied for. But it was evidently an act for the benefit of the grantee, and one in which the interest of the government was not materially involved. She had substantially, according to the mode adopted by her, parted with her title to the land, and this more formal extension was for the satisfaction or better security of the grantee. The subsequent conditions which the governor could lawfully impose, and which were usually in the formal grants, but they have been explicitly introduced and their strict performance neglected, that neglect, according to the principles heretofore adopted by this board, would not, without any action had under the former government, have constituted per se a forfeiture of the title, and were omitted in the grant they existed by virtue of the law.

Even if the document relied upon by the claimant be not a full, complete, and perfect title, there can be no doubt, it seems to me, that it has the force and effect of a bond for the future execution of such a complete and perfect title, and upon the principles of equity ought to have been, and doubtless would have been, specifically performed if the former government had continued, and the execution of a more formal title had been desired by the party concerned.

The fact that this expediente was not returned by the claimant, and deposited with the public archives, is not deemed destructive

of his right. It is true that the proceedings of all the departments in any way concerned with the disposition of the public domain were required to be preserved and constitute the public archives. The finding of an espediente among these archives does furnish evidence that it is not a fictitious or forged proceeding, but it is not conclusive evidence of that fact; and that one is not now to be found there, is not conclusive against its verity, because there is the most incontestable evidence that documents once there are not now to be found. We all know, as a matter of general history, that the public archives of California have been in those often repeated seasons of domestic broils and civil revolution to which she has been fated, not only neglected in their original constitution or formation, but were afterwards exposed to destruction and spoliation. It is not, to be sure, in evidence in this case, but testimony has been taken by us establishing the fact that those very archives were, on one occasion at least of said civil feud, used as so much waste paper by the soldiers for the purpose of making cartridges; that the doors of the house in which they were deposited were open for a long time without any custodian, and that they were accessible to any one for any purpose, either of alteration, subtraction, or addition. I do not, therefore, think that the fact of the non-existence of an espediente among the public archives is conclusive against the rights of a claimant, though it certainly throws upon him an increased burthen of proof.

In the case now before us, from the evidence on file, it appears that the interval of time between the completion of the espediente and the hoisting of the American flag on the 7th of July, 1846, was to a great extent a period of revolutionary warfare, in which the Governor Micheltorena was himself expelled from the country, and that a neglect during that period of all concerned in the making and preserving the memoranda of the proceedings appropriate to the different departments of the government is reasonably accounted for. Silent leges inter arma.

All the objections to which this claim is obnoxious, not disposed of by this opinion, have been fully considered and overruled in the case of Cruz Cervantes, and of others heretofore decided. Upon the principles of decision prescribed of our government in the 11th section of the act of the 3d of March, 1851, we are of the opinion that the claim is valid, and we proceed to enter the following decree of confirmation. Commissioner Hall concurs in the result.

H. J. THORNTON.

Decree.

This board, upon full consideration of the various grounds affecting the validity of the said claim, having come to the conclusion that the same is valid, therefore now proceed to make, and does hereby make, the following decree or report of final confirmation,

viz: It is decreed that the same claim be confirmed to the claimant to the extent and quantity of six square leagues, or sitios, of land, de ganado mayor, and for no more, being the same land described in the said grant and espediente referred to therein, and of which the claimant has been long in possession under the said grant: Provided that the said quantity of land granted, and now here confirmed, be contained within the boundaries called for in the grant and petition, and map, to which the grant refers; and if there be less than the said above named quantity within the said bounds, then we confirm to the claimant that less quantity, it being apparent that said quantity exceeds the minimum of two hundred varas prescribed by the ordinance of the 21st of November, 1828.

Given under our hands this 14th day of February, 1853.

HILAND HALL,
HARRY J. THORNTON,
Commissioners.

Filed in office February 14th, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle Private Land Claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-three pages, numbered from 1 to 33, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office in case No. 201 on the docket of the said board, wherein Samuel J. Hensley is the claimant against the United States for the place known by the name of Aguas Nieves.

In testimony whereof I hereunto set my hand, and affix my private seal, (not having a seal of office,) at San Francisco, [SEAL.] California, this eighth day of May, A. D. 1854, and of the independence of the United States of America the seventy-eighth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed May 8th, 1854.
JOHN A. MONROE, *Clerk.*
By ALEXANDER M. SCHELL,
Deputy Clerk.

Notice of Appeal.

ATTORNEY GENERAL'S OFFICE, *19th August*, 1854.

SAMUEL J. HENSLEY, Claimant,
vs.
THE UNITED STATES. } 201.

You will please take notice that an appeal in the above case, (a transcript of the proceedings in which was received at this office on the 29th of May, 1854,) from the decision of the commissioners to ascertain and settle the private land claims in the State of California, to the district court of the United States for the northern district of California, will be prosecuted by the United States.

C. CUSHING,
Attorney General U. States.

Endorsed: Filed September 20th, 1854.
JOHN A. MONROE, *Clerk.*

Order permitting further Evidence to be taken.

At a special term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Tuesday, the 21st day of November, in the year of our Lord one thousand eight hundred and fifty-four.

Present, the Honorable J. S. K. Ogier, district judge.

THE UNITED STATES
vs.
SAMUEL J. HENSLEY. } No. 33.

On motion of counsel for appellees, and with the consent of the United States district attorney, ordered that leave be granted to all parties to take further evidence in this cause, upon reasonable notice, before a U. S. commissioner of this court.

Endorsed: Filed November 21st, 1854.
JOHN A. MONROE, *Clerk.*

Petition.

To the Honorable District Court of the United States, in and for the northern district of California.

THE UNITED STATES, Appellants,
vs.
SAMUEL J. HENSLEY, Appellee.

The petition of the United States, by their attorney, represents, that this cause is an application for a review and reversal of the decision of the board of commissioners, confirming the claim of the said appellee as appears *be* reference to the records.

That a transcript of the said record was filed in this court on the 8th day of May, 1854; that a notice of appeal was filed there-

in on the 20th day of September, 1854, and that the land claimed lies in the said district.

That the said claim is invalid. Wherefore appellants pray that the title alleged by said appellee be decreed by this court to be invalid.

Respectfully, &c.,
A. GLASSELL,
Ass't U. S. Dist. Att'y, &c.

Endorsed: Filed June 14th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Answer.

SAMUEL J. HENSLEY } ads. THE UNITED STATES.

In the District Court of the United States for the northern district of California.

This respondent, for answer to the petition filed in this case, answers and says, that his title to the lands mentioned in said petition, and in said transcript of the proceedings before the said board of commissioners, is valid, and prays that the decision of said board be affirmed, and his title be decreed to be valid.

THORNTON & WILLIAMS,
For Claimant.

Endorsed: Filed June 14th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Opinion by his Honor Judge M. H. McAllister.

District Court of the United States for the northern district of California.

THE UNITED STATES, Appellants, vs. SAMUEL J. HENSLEY, Appellee.

On the 25th July, 1844, the appellee petitioned Governor Micheltorena for a grant of land known by the name of the "Aguas Nieves," consisting of six leagues of ganado mayor, bounded on the north by the arroyo Chico, on the east by the foot of Sierras Nevadas, on the south by vacant land, and on the west the rancho of Llano Seco and of Farwell," as shown on the map accompanying the petition. On the same day a marginal decree was entered on the petition directing the secretary of despatch to give information, taking those steps he may deem necessary. On the succeeding day the expediente is ordered by the secretary to be referred to Señor

Sutter to inform as to the matter it refers to. On 2d September following, J. A. Sutter reports the land petitioned for by appellee, and which is represented on the accompanying map to be unoccupied. A few weeks after this report Manuel Jimeno addresses the governor in these words: "That you may continue with the more prudence the colonization of lands on the Sacramento river, it would be well to suspend all petitions of a kind similar to the foregoing, (alluding to the grant of appellee,) until you can make a visit to the said point. But you will dispose whatever is right."

There follows this address a note without date, signed by the governor, in these words: "Let the same be done according to the information."

The last document in the espediente is one executed by the governor, dated 22d December, 1844, on which appellee founds his claim, and is in these words:

Manuel Micheltorena, General of Brigade of the Mexican Army, Adjutant General of the Staff, Governor Commandant General and Inspector of the Department of the Californias.

Not being able now, on account of being closely occupied with the supreme department, to extend one by one the respective titles to all the citizens who have petitioned for lands with a favorable information from Señor Don Augustus Sutter, captain and judge in charge of the jurisdiction of New Helvetia and Sacramento, in the name of the Mexican nation, by these letters, I confer upon them and their families the lands described in their applications and maps, to all and each one of them who has solicited and obtained favorable information from said Señor Sutter, up to the day of this date, so that no one can dispute their title. Señor Sutter will give them a copy of this in furtherance of a formal title, with which they will present themselves to this government to extend the same title in the proper form and upon corresponding sealed paper; and for the establishment of which fact for all time, I give this document, which will be known and acknowledged by all the civil and military authorities of the Mexican nation in this and the other departments.

Duly authenticated with the seal of the government and the military seal in Monterey, this 22d of December, 1844.

Captain John A. Sutter swears he received the original of above document from Governor Micheltorena, and gave a copy of it to appellee as security for the land he claims, until such time as he could perfect his title to the same according to the forms required by law. He identifies the copy of the map as a correct transcript of the original. The witness (who is the same person referred to in the grant of Micheltorena) was military commander under the Mexican authority, exercising civil and military jurisdiction in 1844 and 1845, and identifies the ranch of appellee, which was

within his jurisdiction. The witness had been applied to by appellee for judicial possession of the ranch, in the spring of 1845, which witness did not give him because he (the witness) was engaged in a military campaign from January to April, 1845, and immediately after his return were again on a campaign against the Indians, at the termination of which Colonel Fremont and his party came into that part of the territory and a general revolution ensued, soon after which witness ceased to exercise civil or criminal jurisdiction.

Another witness, J. B. Reading, deposes that appellee in September, 1845, built a house on the land and cultivated the soil. There is no doubt of the genuineness of the documents, or the performance of the condition as to building and occupying the land. The failure to obtain judicial possession cannot, under the facts in proof, be considered as a forfeiture of any interest appellee may have. To ascertain the character of that interest, it is necessary to determine upon the character of the document executed by Governor Micheltorena, on 22d December, 1844. It is understood there are several grantees, who, similarly situated with appellee, claim under the same instrument. The decision in this case therefore will exert a controlling influence on the fortunes of other cases.

To ascertain the character of the paper under consideration, three inquiries demand solution:

1. Was there a grantor capable of granting?
2. Was the thing conveyed sufficiently described to render it capable of being granted?
3d. Was the appellee so designated as to enable him to take as grantee?

The general power of the governor to grant is undoubted; the objection to its exercse is, that the forms prescribed in the regulations of November, 1828, were not pursued in this instance. The grant in this case is undoubtedly variant in form from any which has heretofore come to the notice of this court. It does not contain the usual recitals, and it grants lands to several persons instead of being a conveyance of one tract to one person. If, upon general principles, this grant can be sustained, the court considers that a departure from forms to be implied from regulations which are merely directory, cannot invalidate the grant, provided the grantor has not in substance transcended his power. No form of granting was prescribed. In this case, the petition was filed, referred, and information in relation to it obtained in the manner prescribed by the general regulations of 18 November, 1828; and, above all, the grant was issued upon the consideration and to carry out the policy indicated in the colonization decree of 18th August, 1824, and the regulations of 21st November, 1828. There was a substantial compliance with these. It is in proof that the steps re-

quired to be taken by the petitioner and the governor, by the law and regulations, were in fact, taken by both. We consider, therefore, that the power of granting was, under the circumstances, legitimately exercised in this instance. What interest did it pass to the appellee? If at the time the sovereignty of Mexico passed to the United States, any interest, legal or equitable, remained vested in the appellee, the United States are bound in good faith to uphold and protect it. Fremont vs. the United States Sup. Ct.—Dec'r term, 1854. The language of the instrument executed by Governor Micheltorena, the fulfilment by appellee of the consideration for which it issued, leave no doubt that at least an equitable interest was vested in the appellee, which the court is bound to protect, if on general principles that instrument can be sustained.

Was there, then, such a vagueness in the description of the thing granted as to render the grant void? The court thinks not. True, there is no description of the land in the grant, but reference is made in that instrument to that which renders the thing granted capable of being reduced to certainty. Id certum est quod certum reddi postest.

The grant concedes to each applicant who, at the time of its date, had applied for land, and obtained the favorable information of Señor Sutter, captain, judge, &c., the land described in his application and map "so that no one could dispute his title." There is no rule which would inhibit the proof of the extrinsic fact of appellee having made his application, obtained the favorable information, and described the land on his application and map within the time mentioned in the grant. This is not to contradict the written instrument, but to explain it.

The last ground to be considered is, the including several parties as grantees in the same grant. We see nothing in the colonization decree of 18th August, 1824, or in the regulations of 21st November, 1828, to inhibit it. The only inquiry, then, is, whether upon general principles the grantee is so designated as to enable him to take, or the uncertainty in the designation of the grantee so great as to avoid the grant. It is a rule of interpretation, that a grant is void for uncertainty where the grantee is not sufficiently designated, so as to distinguish him from all others, and where such designation cannot be gathered from the face of the grant, it cannot be supplied by parol testimony. Thus a grant to the heirs ot A in being is void, non constat who are the heirs of a living person. If the word heirs is to be construed children, then what children? Are those in esse at the time of the grant only to take, or were after-born to be included? Was the grant to take effect immediately, or at the death of grantor? If no children survived A, would his brothers and sisters take? There are no means here of ascertaining with certainty the intention of the grantor from the face of the

deed. The deed is therefore void for uncertainty in the designation of the grantees.

Admitting this rule in its full extent, it by no means follows that the grantee must be named.

"The names of persons at this day are only sounds for distinction sake, though it is probable they originally imparted something more, as some natural qualities, features or relations; but now there is no other use of them, but to mark out the individuals we speak of, and to distinguish them from all others; and therefore in grants which are to receive the most benign interpation, and most against the grantor, if there be sufficient shown to ascertain the grantor and grantee, and to distinguish them from all others, the grant will be good." Bacon's An., tit. Grant (c.)

"If they (the grantees) are so designated as to distinguish them from all others, the grant would be given without any name at all, and a mistake in the name in such a case would not vitiate." Hall vs. Leonard, 1 Pick'g, 30. Again, parol evidence is admissible to show the situation of a party in his relation to things and persons around him. Thus, if the language of the instrument is applicable to several persons or things, parol evidence is admissible of any extrinsic circumstances to show what person or persons were intended. 1 Greenleaf's Evi., § 285. Lastly, in the interpretation of a grant made by the government, where it in general terms refers to a certainty, it is the same as if the certainty had been expressed in the grant, though such certainty be not matter of record, but lie in averment, by matter in pais or in fact. 2 Greenleaf's Colize, title ch. 34, King's grant, 45.

In the grant under consideration the appellee is not named, but there is sufficient on the face of the document to enable us by proof of extrinsic facts to distinguish him from all others, and thus bring the case within the rule. After reciting that, on account of being closely occupied with the business of the supreme department, he is unable to extend one by one the respective titles to all who were entitled to them, the governor proceeds to convey to each and all who had previously complied with the law by applying for lands and obtaining favorable information, the lands described in their respective applications and maps. The appellee was one of these, and to whom Señor Sutter therefore delivered a copy of the grant in pursuance of the directions therein contained. The court therefore considers the appellee sufficiently designated to enable him to take as grantee. An objection was urged before the board on the ground that there was no delivery of the grant to the appellee. We consider there is no force in this objection, for the delivery by Governor Micheltorena to Sutter for and on behalf and to the use of the appellee was sufficient. 2 Greenleaf's *Couze*, title 32, ch. 2, sec. 66. The decision of the board of commissioners in favor of the validity of the claim of appellee must be affirmed.

Decree.

In the District Court of the United States for the northern district of California.

THE UNITED STATES vs. SAMUEL J. HENSLEY. } No. 33.—Decree. Stated term, July 5th, 1855.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause coming on to be heard in this court on an appeal from the decree and opinion of the board of commissioners to ascertain and settle private land claims in the State of California, under the act of 3d March, 1851, upon the transcript of the proceedings, decision, papers and evidence on which said decree and decision was founded, and counsel having appeared for both parties, whereof it is hereby ordered, adjudged and decreed, that the decree and final decision of the said commissioners be, and the same is hereby affirmed.

M. HALL McALLISTER,
Circuit Judge.
OGDEN HOFFMAN, Jr.,
Dist. Judge.

Endorsed: Filed July 5th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order granting Appeal, &c.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Thursday, the fifth day of July, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable M. H. McAllister, circuit judge, and the Honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES vs. SAMUEL J. HENSLEY. } No. 33.

In this case, on the application of the United States district attorney made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court rendered in said cause at the present term be, and the same is hereby granted, and that a certified transcript of the pleadings, evi-

dence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed July 5th, 1855.

JOHN A. MONROE, *Clerk*.
By W. H. CHEVERS, *Deputy*.

Order to file Mandate U. S. Supreme Court.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco on Friday, the 30th day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES vs. SAMUEL J. HENSLEY. } No. 33.

And now at this day comes the said claimant, Samuel J. Hensley, by his attorney, J. J. Williams, and presents the mandate of the United States Supreme Court dismissing the appeal made herein on behalf of the United States to the said Supreme Court; whereupon, and on motion of said claimant by his attorney, it is ordered that said mandate be filed and made a part of the record of this court in this cause, and that the said claimant, Samuel J. Hensley, may proceed under the decree of this court heretofore rendered in favor of the claim of said claimant, as under final decree.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed April 30th, 1858.

W. H. CHEVERS, *Clerk*.

Mandate.

UNITED STATES OF AMERICA, *ss*.

[SEAL.]

The President of the United States of America to the honorable the Judge of the district court of the United States, for the northern district of California, greeting:

Whereas, lately, in the district court of the United States for the northern district of California, before you, in a cause between the United States, appellants, and Samuel J. Hensley, appellee, wherein a decree was rendered in favor of the said appellee by affirming the decision of the commissioners to ascertain and settle the private land claims in the State of California; whereupon the said appellants prayed an appeal, which was duly allowed by the said district court, to remove the said cause to the Supreme Court of the United States, as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme

Court of the United States agreeably to the act of Congress and the rules of the said Supreme Court in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-seven, the said cause came on to be heard before the said Supreme Court, and it appearing that the said appellants have failed to have their cause filed and docketed in conformity to the rules of this court, it is now here ordered and decreed by this court, that this appeal from the district court of the United States for the northern district of California be, and the same is hereby docketed and dismissed, and that this cause be, and the same is hereby remanded to the said district court. Jan. 11.

You, therefore, are hereby commanded that such proceedings be had in said cause as, according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-seven.

WM. THO'S CARROLL,
Clerk of the Supreme Court of the United States.

Endorsed: Filed April 30th, 1858.

W. H. CHEVERS, *Clerk.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the thirtieth day of November, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
SAMUEL J. HENSLEY. } No. 33.—L. C. 201.

In this case, on application of P. Della Torre, esq., United States attorney, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court rendered in said cause at the June, 1855, term, be, and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay; and the appellants are ordered to serve the usual citation according to law.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed November 30th, 1858.

W. H. CHEVERS, *Clerk.*

Citation.

UNITED STATES OF AMERICA, *ss.*

To Samuel J. Hensley, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the first Monday in December next, pursuant to an order of appeal granted on the thirtieth day of November, A. D. 1858, in open court, by the district judge of the district court of the United States for the northern district of California, in a certain suit wherein the United States are plaintiffs and you are defendant, on appeal, to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at San Francisco, this thirtieth day of November, in the year of our Lord one thousand eight hundred and fifty-eight. [SEAL.]

OGDEN HOFFMAN,
Dist. Judge.

Received copy within citation, served by United States marshal, this 30th day of November, A. D. 1858.

THORNTON, WILLIAMS & THORNTON.

Endorsed: Filed December 1st, 1858.

W. H. CHEVERS, *Clerk.*

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify, that the annexed and foregoing pages, numbered from one to forty-six, both inclusive, contain a full, true, and correct transcript of the record from the board of U. S. land commissioners, and of the pleadings, opinion, decree, orders, mandate and citation in said court, filed in this office in the case of the United States, appellants, v. Samuel J. Hensley, appellee.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at San Francisco, this fourth day of December, A. D. 1858, and of our independence the 83d. [SEAL.]

W. H. CHEVERS, *Clerk.*

Filed 9th February, 1859.